

Persons operating diesel powered recreational-type watercraft upon the waters of this State must use undyed ("clear") diesel fuel for all such operations and pay the Motor Fuel Tax. 35 ILCS 505/2. (This is a GIL).

July 18, 2000

Dear Xxxxx:

This letter is in response to your letter to Sherry Smothers dated May 4, 2000. Your letter has been forwarded to the Legal Services Office for response. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am writing to you regarding Marine use of diesel fuel which we discussed in our telecon to PERSON on May 2, 2000, and our telecon to PERSON2 on May 31, 2000.

It is at this time that I ask the Illinois Department of Revenue to clarify different applications based on different scenarios in the marine diesel fuel use field. Please clarify the following:

Commercial/Charter Use - Tax Exempt

The only marine fuel use that is tax exempt from the Illinois motor fuel tax (21-1/2 cents) are boats used specifically for COMMERCIAL and/or CHARTER use. (dyed red diesel)

Pleasure Use - Taxable

Boats that are used for NON COMMERCIAL or CHARTER use must use 'clear' diesel fuel and be charged the Illinois motor fuel road tax of .2150.

Clarification

In addition to the legislative charter, I ask for your help to further clarify what the language does not make clear in the taxable application:

1. Any PLEASURE use boat which purchases fuel within the Illinois waterways is taxable and must purchase clear diesel fuel or otherwise be subject to Illinois penalties.
2. Any PLEASURE use boat in which diesel fuel is purchased outside of Illinois waterways then travels onto Illinois waterways must contain clear diesel fuel or otherwise be subject to Illinois penalties.

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3. An out of state registered PLEASURE use boat traveling onto Illinois waterways at any time and for any length of period must contain clear diesel fuel or is subject to State of Illinois penalties.
4. Any PLEASURE use boat which originates from Illinois waterways to travel to an out of state destination requiring to be refueled in an out of State fueling facility in order to return back to its Illinois harbor, or any Illinois waterway, must not return with dyed fuel.
5. Any PLEASURE use boat that will enter onto Illinois waterways which has dyed fuel on board which was purchased prior to January 1, 2000, will be subject to penalties.
6. Conclusion - At no time for any reason is any PLEASURE boat ever to contain dyed fuel when on an Illinois waterway, without exception.

I want the State to acknowledge that the fuel distributor will have no liability to the State if the boat operator signs a document, prior to fueling, stating that he is purchasing dyed fuel for COMMERCIAL and/or CHARTER use only. Our language is attached and will be required to be signed at the time of fuel delivery.

In the spirit of full cooperation and complete understanding of the law, the State must include all of these questions with your answer to each on the State's letterhead.

Since the boating season is already in progress, it is imperative that these questions be answered as soon as possible.

Under the Motor Fuel Tax Law, "a tax is imposed on the privilege of operating motor vehicles upon the public highways and recreational-type watercraft upon the waters of this State." 35 ILCS 505/2.

Beginning January 1, 2000 the State of Illinois implemented a dyed diesel fuel program. (See Public Act 91-173.) Under this program, all special fuel, including diesel fuel, sold or used for non-highway purposes must have a dye added in accordance with Section 4d of the Motor Fuel Tax Law. Diesel fuel used on the highway must not contain dye.

Dyed diesel fuel is sold for non-highway purposes free of Motor Fuel Tax. Therefore, it may not be used in motor vehicles operating upon the public highways or in recreational-type watercraft operating upon the waters of this State. Persons operating diesel powered recreational-type watercraft upon the waters of this State must use undyed ("clear") diesel fuel for all such operations and pay the Motor Fuel Tax or be subject to penalties. Persons

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operating non-recreational-type watercraft upon the waters of this State may purchase clear fuel; however, since the Motor Fuel Tax is not imposed upon the privilege of operating non-recreational-type watercraft upon the waters of this State, such purchases of clear fuel may be made tax-free.

In other words, the operator of any recreational-type watercraft that purchases diesel fuel within the Illinois waterways must purchase clear diesel fuel and pay the Motor Fuel Tax or be subject to penalties. The operator of any recreational-type watercraft that purchases diesel fuel outside of Illinois waterways and then travels into Illinois waterways must have clear diesel fuel in the tanks of its recreational-type watercraft on Illinois waters or be subject to Illinois penalties. An out-of-State registered recreational-type watercraft traveling into Illinois waters must contain clear, rather than dyed, diesel fuel on Illinois waters. Any recreational-type watercraft whose trip originates in Illinois waterways and who then travels to an out-of-State destination and is refueled in an out-of-State fueling facility must not return into Illinois waters with dyed fuel in its tank. Any recreational-type watercraft that enters upon Illinois waters with dyed fuel in its tank will be subject to penalties regardless of whether the fuel was purchased prior to January 1, 2000. As stated above, beginning January 1, 2000, no recreational-type watercraft may contain dyed diesel fuel when in Illinois waters.

While we are unable to approve forms submitted by taxpayers, we advise all vendors of dyed diesel fuel to take care in documenting sales of dyed diesel fuel. As you may be aware, there are serious consequences for any person who knowingly sells or attempts to sell dyed diesel fuel for highway use, including civil and criminal penalties. There are also civil and criminal penalties for any person who sells or transports dyed diesel fuel without the notice required by Section 4e of the Motor Fuel Tax Law. Section 4e requires that "[a] legible and conspicuous notice stating 'Dyed Diesel Fuel, Non-taxable Use Only, Penalty For Taxable Use' must appear on all shipping papers, bills of lading, and invoices accompanying any sale of dyed diesel fuel." 35 ILCS 505/4e.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel